

3653



PTO/SB/21 (03-03)  
Approved for use through 04/30/2003. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/364,794	
	Filing Date	07/30/1999	
	First Named Inventor	J. Eric Berge	
	Art Unit	3653	
	Examiner Name	Jeffrey A. Shapiro	
Total Number of Pages in This Submission	5	Attorney Docket Number	7480-PA1CP2

ENCLOSURES (Check all that apply)											
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): request to withdraw application from appeal for continued examination by examiner (4 pp.); return postcard									
Remarks											
<b>SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT</b> <table border="1"> <tr> <td>Firm or Individual</td> <td>James W. McClain</td> <td>Reg. No. 24,536</td> </tr> <tr> <td>Signature</td> <td colspan="2"><i>James W. McClain</i></td> </tr> <tr> <td>Date</td> <td colspan="2">08/28/2003</td> </tr> </table>			Firm or Individual	James W. McClain	Reg. No. 24,536	Signature	<i>James W. McClain</i>		Date	08/28/2003	
Firm or Individual	James W. McClain	Reg. No. 24,536									
Signature	<i>James W. McClain</i>										
Date	08/28/2003										

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 08/28/2003			
Typed or printed	Karen L. Johnson		
Signature	<i>Karen L. Johnson</i>	Date	08/28/2003

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

205

Application Number

09/364,794

Filing Date

07/30/1999

First Named Inventor

J. Eric Berge

Art Unit

3653

Examiner Name

Jeffrey A. Shapiro

Attorney Docket Number

7480-PA1CP2

**ENCLOSURES (Check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC)
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	RCE transmittal (1 p.); form PTO
<input checked="" type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	SB/08A (1 pp.); 20 cited refs (175 pp.);
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	return postcard
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

**RECEIVED**  
SEP 09 2003  
GROUP 3600**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual	James W. McClain	Reg. No. 24,536
Signature		
Date	08/28/2003	

**CERTIFICATE OF TRANSMISSION/MAILING**

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08/28/2003

Typed or printed

Karen L. Johnson

Signature

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# FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 750.00

## Complete if Known

Application Number	09/364,794
Filing Date	07/30/1999
First Named Inventor	J. Eric Berge
Examiner Name	Jeffrey A. Shapiro
Art Unit	3653
Attorney Docket No.	7480-PA1CP2

## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit Account Number: 02-4070  
Deposit Account Name: Brown Martin Haller & McClain LLP

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) during the pendency of this application

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
		1001	750	Utility filing fee	
		1002	330	Design filing fee	
		1003	520	Plant filing fee	
		1004	750	Reissue filing fee	
		1005	160	Provisional filing fee	
SUBTOTAL (1)					(\$ )

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
	-20** =	X	
Independent Claims	-3** =	X	
Multiple Dependent			

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description
1202	2202	18	9	Claims in excess of 20
1201	2201	84	42	Independent claims in excess of 3
1203	2203	280	140	Multiple dependent claim, if not paid
1204	2204	84	42	** Reissue independent claims over original patent
1205	2205	18	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$ )

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	2051	130	65	Surcharge - late filing fee or oath	
1052	2052	50	25	Surcharge - late provisional filing fee or cover sheet	
1053	1053	130	130	Non-English specification	
1812	1812	2,520	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	1804	920*	920*	Requesting publication of SIR prior to Examiner action	
1805	1805	1,840*	1,840*	Requesting publication of SIR after Examiner action	
1251	2251	110	55	Extension for reply within first month	
1252	2252	410	205	Extension for reply within second month	
1253	2253	930	465	Extension for reply within third month	
1254	2254	1,450	725	Extension for reply within fourth month	
1255	2255	1,970	985	Extension for reply within fifth month	
1401	2401	320	160	Notice of Appeal	
1402	2402	320	160	Filing a brief in support of an appeal	
1403	2403	280	140	Request for oral hearing	
1451	1451	1,510	1,510	Petition to institute a public use proceeding	
1452	2452	110	55	Petition to revive - unavoidable	
1453	2453	1,300	650	Petition to revive - unintentional	
1501	2501	1,300	650	Utility issue fee (or reissue)	
1502	2502	470	235	Design issue fee	
1503	2503	630	315	Plant issue fee	
1460	1460	130	130	Petitions to the Commissioner	
1807	1807	50	50	Processing fee under 37 CFR 1.17(q)	
1806	1806	180	180	Submission of Information Disclosure Stmt	
8021	8021	40	40	Recording each patent assignment per property (times number of properties)	
1809	2809	750	375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	2810	750	375	For each additional invention to be examined (37 CFR 1.129(b))	
1801	2801	750	375	Request for Continued Examination (RCE)	750.00
1802	1802	900	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$ ) 750.00

## SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	James W. McClain	Registration No. (Attorney/Agent)	24,536	Telephone	619 238 0999
Signature		Date	08/28/2003		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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#30  
9/17/03  
meh

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of	)	APPEAL NO. 2003-1616
J. ERIC BERGE ET AL.	)	FOR: VACUUM PNEUMATIC SYSTEM
Serial No.: 09/364,794	)	FOR CONVEYANCE OF ICE
Filed: July 30, 1999	)	Appealed from Group Art Unit 3653
	)	Examiner: Jeffrey A. Shapiro

REQUEST TO WITHDRAW APPLICATION FROM APPEAL  
FOR CONTINUED EXAMINATION BY EXAMINER

Board of Patent Appeals and Interferences  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attention: Program and Resource Administrator

Dear Sir:

A Request for Continued Examination of this application is being submitted simultaneously herewith so that the application can be returned to the Examiner for consideration, inter alia, of newly identified prior art. A copy of that Request is enclosed herewith.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

August 28, 2003

Karen L. Johnson

(Name)

*Karen L. Johnson*

(Signature)

August 28, 2003

(Date of Signature)

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- 2 -

It is respectfully requested that, upon the granting of the Request for Continued Examination by the Patent and Trademark Office, this appeal be deemed withdrawn and the file of the application returned to the Examining Group for said continued examination. This request is consistent with the requirements of 37 C.F.R. § 1.114 and M.P.E.P. § 1215.01.

Withdrawal of this appeal is not to be considered to be abandonment by Applicants of this application nor of the invention described and claimed herein. Neither is it to be considered abandonment of any argument made by Applicants in any Brief or other submission to the Board nor of agreement with any argument made by the Examiner in any Answer or other submission to the Board. Neither is it to be considered waiver by Applicants of their right to appeal any subsequent final rejection by the Examiner as a result of said continued examination.

#### **FEES**

It is not believed that any fees are due with respect to this request for withdrawal of the appeal. However, should any such fees be due, the Patent and Trademark Office is authorized to charge all such fees to Deposit Account No. 02-4070.

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- 3 -

**CONCLUSION**

Should the Board or its delegate believe that consideration of this request might be expedited by discussion of any matters, a telephone call to the undersigned attorney, collect, at the telephone number listed below, is cordially invited.

Respectfully submitted,

Date: August 28, 2003

By: 

James W. McClain, Reg. No. 24,536  
Attorney for Applicants

BROWN, MARTIN, HALLER & McCLAIN LLP  
1660 Union Street  
San Diego, California 92101-2926

Telephone: (619) 238-0999  
Facsimile: (619) 238-0062  
email: [jmcclain@bmhm.com](mailto:jmcclain@bmhm.com)  
Docket No.: 7480 PA1CP2